

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

DANELLE M ELLINGBOE

Debtor(s)

NOTICE OF MOTION AND MOTION
FOR DISMISSAL OR CONVERSION

Case No. - BKY 17-43158 KHS
Chapter 13

TO: Debtor(s), Debtor(s) Attorney, all parties in interest under Local Rule 9013-3, and the United States Trustee.

1. Gregory A. Burrell, (Trustee), moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 10:30 a.m., or as soon thereafter as counsel may be heard, on **December 21, 2017**, in U.S. Bankruptcy Court, Courtroom 8 West, Eighth Floor, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.
3. Any response to this motion must be filed and served not later than December 15, 2017, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). ***Unless a response opposing the motion is timely filed, the court may grant the motion without a hearing.***
4. The Court has jurisdiction of this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §1307 and Fed. R. Bankr. P. 1017. This motion is filed under Fed. R. Bankr. P. 9013 and Local Rule 9013-1 *et seq.* The petition commencing this Chapter 13 case was filed on 10/18/17. The case is now pending in this Court.
5. If testimony is necessary as to any facts relevant to this motion, Dawn Kassa, Chapter 13 Trustee's Office, 100 South Fifth Street, Suite 480, Minneapolis, Minnesota, will testify on behalf of the Trustee.
6. The Trustee requests that this case be dismissed or converted to a Chapter 7 case, and such other relief as the Court deems just, for the following reason(s):
 - (X) A. Debtor(s) have failed to appear at §341(a) meeting of creditors and has not been examined.
 - (X) B. Debtor(s) have failed to make the initial payment proposed by the plan within 30 days after the plan was filed, (11 U.S.C. §1326(a)(1)), and subsequent plan payments that may come due by the date of the hearing on this motion.
 - () C. The plan term has expired. The amount needed to complete the plan is \$.
 - () D. The Trustee has received notice of non-sufficient funds. **All future payments must be made by money order or cashier's check if this motion is denied or withdrawn and sent to: Gregory A. Burrell; PO Box 860026; Minneapolis, MN 55486-0026. Do not send payments to the trustee's office.**
 - () E. Confirmation of the Debtor(s)' plan has been denied.

() F. Debtor(s) have failed to make payments to Trustee thereby creating current defaults or arrearages on plan payments of \$0.00 as of November 30, 2017, and subsequent plan payments that may come due by the date of the hearing of this motion. The last payment credited to the Debtor(s)' account was on //. Total payments of \$0.00 have been made to date hereof. Required monthly payments are currently \$315.00.

The November, 2017 payment is not included in the listed default amount.

Any payment less than the amount required to bring the plan current will not prevent dismissal of this case. If the default, including the payment due for November, is brought current by the hearing date, the Trustee will strike the motion.

All payments to cure plan arrears must be made with a cashiers check or money order.

NO PERSONAL CHECKS WILL BE ACCEPTED.

() G. Debtor(s) have failed to pay post-petition amounts payable under a domestic support obligation as they became due. 11 U.S.C. § 1307(c)(11).

() H. *Debtors have failed to establish that all applicable Federal, State and Local tax returns as required by § 11 U.S.C. 1308 have been filed. § 11 U.S.C. 1307 (e).*

() I. The debtor has failed to bring to the meeting of creditors under §341 and make available to the Trustee statements for each of the debtor's pay stubs or depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition, as required by Interim Bankruptcy Rule 4002(b)(2), and has failed to do so to date.

() J. The debtor(s) have materially defaulted in the terms of the confirmed chapter 13 plan OR have failed and refused to comply with the statutory duty to cooperate with the trustee in his reasonable requests for information, by failing to provide the trustee with copies of the debtors' 2016 federal and state income tax returns and/or tax refunds in the amount of \$, despite having been sent multiple written requests. 11 U.S.C. § 1307, 11 U.S.C. § 521 (a) (3), 521 (f).

() K. The debtor(s) have materially defaulted in the terms of the confirmed chapter 13 plan OR have failed and refused to comply with the statutory duty to cooperate with the trustee in his reasonable requests for information, by failing to notify the Trustee of the receipt of any received bonuses or additional funds received in 2016 and/or funds from bonus in the amount of \$, despite having been sent multiple written requests. 11 U.S.C. § 1307, 11 U.S.C. § 521 (a) (3), 521 (f).

WHEREFORE the Trustee requests an order granting the relief prayed for herein.

Gregory A. Burrell, Trustee

Dated: November 30, 2017

/e/ Jeffrey M. Bruzek
Jeffrey M. Bruzek #319260
Margaret H. Culp #180609
Counsel for Chapter 13 Trustee
100 South Fifth Street, Ste. 480
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Dawn Kassa, an employee of the Trustee, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: November 30, 2017

/e/ Dawn Kassa
Dawn Kassa
Chapter 13 Office

In Re:

DANELLE M ELLINGBOE

Debtor(s)

UNSWORN DECLARATION OF
PROOF OF SERVICE

Case No. - BKY 17-43158 KHS
Chapter 13

I, Dawn Kassa, declare that on the date stated below I served a copy of the Notice of Motion and Motion for Dismissal or Conversion and Unsworn Declaration of Proof of Service, upon each of the entities named below in the manner described, as follows:

Copy to Debtor addressed to:

DANELLE M ELLINGBOE
805 DOGWOOD STREET SOUTHWEST
ISANTI, MN 55040

Additional Copy(s) by electronic mail or by First Class U.S. Mail postage prepaid, addressed to:

DITECH FINANCIAL LLC
PO BOX 6154
RAPID CITY SD 57709-6154

and I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: November 30, 2017

/s/ Dawn Kassa
Dawn Kassa
Chapter 13 Office